STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD TIGNEY,

Defendant-Appellant.

UNPUBLISHED
April 12, 2007

No. 267187
Wayne Circuit Court
LC No. 05-007973-01

Before: Neff, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Defendant Charles Edward Tigney appeals as of right his bench trial convictions for two counts of first-degree criminal sexual conduct, MCL 750.520b; two counts of second-degree criminal sexual conduct, MCL 750.520c; and one count of accosting a child for immoral purposes, MCL 750.145a. We affirm.

Defendant first argues that there was insufficient evidence to support his convictions because the victim provided the only evidence against him. "Generally, we review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). Defendant does not argue that the victim's testimony, if believed, was sufficient evidence from which a rational trier of fact could find that defendant committed the crimes. Instead, he argues that the victim's testimony was too inconsistent with the other witnesses to substantiate defendant's conviction. However, the trial court specifically found that the victim was more credible than defendant when testifying about the encounters, and questions of credibility are left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). In fact, the trial court specifically determined that defendant's testimony was unpersuasive, and the testimony of a victim alone is sufficient evidence from which a trier of fact can infer that sexual penetration occurred. MCL 750.520h; *People v Robideau*, 94 Mich App 663, 674; 289 NW2d 846 (1980). Because the trial court resolved the credibility contest in the victim's favor, there was sufficient evidence from which the court could find, beyond a reasonable doubt, that defendant committed the charged crimes.

Defendant next argues that the lower court lacked sufficient evidence to score offense variable four (OV 4), MCL 777.34, and OV 10, MCL 777.40, at ten points each. We review for clear error the court's factual findings and guidelines scores. MCR 2.613(C); *People v Hicks*,

259 Mich App 518, 522; 675 NW2d 599 (2003). "A scoring decision will be upheld if there is any evidence to support it." *People v Kegler*, 268 Mich App 187, 190; 706 NW2d 744 (2005).

A sentencing court should score ten points for OV 4 if the victim of a crime suffered "[s]erious psychological injury requiring professional treatment." MCL 777.34(1)(a). In this case, the prosecutor asserted, and defendant did not dispute, that the victim was seeking psychological counseling at the time of the sentencing hearing. In addition, the trial court had the opportunity to view the victim's demeanor and hear her description of events. See *People v Wilkens*, 267 Mich App 728, 740-741; 705 NW2d 728 (2005). The trial court's decision to score ten points to defendant for OV 4 was properly supported by the record and was not an abuse of discretion.

Under MCL 777.40(2), a sentencing judge should score ten points for OV 10 if the defendant "exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status . . . ." "'Exploit' means to manipulate a victim for selfish or unethical purposes." MCL 777.40(3)(b). In this case, the victim testified that she did not know how to react to defendant's repeated requests for fellatio, and that she was scared by defendant's instruction to her that she should not inform anybody about the sexual episodes. Defendant used the victim's young age to manipulate her for selfish and unethical purposes, so the trial court's decision to score ten points for OV 10 was not clearly erroneous.

Finally, defendant argues that his sentences for his convictions of first-degree criminal sexual conduct violate the rule in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree. It is a violation of the Sixth Amendment for a trial court to increase a defendant's sentence beyond the maximum sentence permitted by law on the basis of facts found by the court rather than the jury. *Id*. at 301-302. However, Michigan's sentencing scheme is not affected by *Blakely* because Michigan uses an indeterminate sentencing scheme in which a trial court sets a minimum sentence but can never exceed the statutory maximum sentence. *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006). "As long as the defendant receives a sentence within that statutory maximum, a trial court may utilize judicially ascertained facts to fashion a sentence within the range authorized by the jury's verdict." *Id.* In this case, the statutory maximum for first-degree criminal sexual conduct is life imprisonment, and the statutory maximum for second-degree criminal sexual conduct is 15 years' imprisonment. MCL 750.520b; MCL 750.520c. Defendant's sentences clearly fall within the maximum penalty allowed by statute.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Christopher M. Murray